

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
G. BOEHM and S. CLARE,) OTA NO. 220810994
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, May 18, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:00 p.m. and concluding at 2:48 p.m. on
Thursday, May 18, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Panel Lead: ALJ VERONICA LONG

Panel Members: ALJ JOHN JOHNSON
ALJ CHERYL AKIN

For the Appellant: JOHN RHIND
S. BOEHM

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

MATHEW MILLER
BRAD COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-13 were received at page 7.)

(Department's Exhibits A-G were received at page 7.)

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California; Thursday, May 18, 2023

10:00 a.m.

JUDGE LONG: We're going to go on the record.

This is the Appeal of Boehm and Clare, OTA Case Number 220810994. It is 2:00 o'clock p.m. on May 18th, 2003. The appeal is being conducted electronically led by myself Judge Veronica Long here in Sacramento, California.

While I am the lead ALJ for purposes of conducting this hearing, the Panel decides these opinions together. At this point, let me introduce my co-Panelist, Judge Cheryl Akin and Judge John Johnson.

Before we introduce the parties, I'd like to remind everyone the Office of Tax Appeals is not a court but is an independent appeals body. The office is staffed by tax experts and is independent of the State's tax agencies. We do not engage in any ex parte communications with either party. Our decision will be based on the arguments and evidence provided by the parties on appeal in conjunction with an appropriate application of the law.

We have read the briefs and examined the exhibits and are looking forward to your arguments today. Many steps were taken to get to this point, and we appreciate the efforts of all the parties here today. We fully respect the importance of our decision to be made on this

1 appeal.

2 Now, I'll ask the parties to introduce
3 themselves, and I will begin with the Appellants.

4 MR. RHIND: Hi, Your Honors. This is John Rhind.
5 I'm the accountant for the taxpayers. And I do want to
6 thank you for the opportunity to present our request to
7 abate the late-payment penalty on the 2020 tax return.
8 It's our belief that the information that we provided in
9 the various exhibits --

10 JUDGE LONG: Mr. Rhind, let me stop you. We will
11 give you the -- I will tell you when it's your opportunity
12 to present your case. But --

13 MR. RHIND: Oh, I'm sorry.

14 JUDGE LONG: -- right now we're just doing
15 introductions. That's completely fine.

16 We have Mr. Rhind on the record for the record
17 for Appellants.

18 Appellants, would you also like to state your
19 names for the record.

20 MS. CLARE: Sequoia Boehm.

21 MR. BOEHM: Gregg Boehm.

22 JUDGE LONG: All right.

23 And then Franchise Tax Board, can you please
24 introduce themselves for the record.

25 MR. MILLER: Hello. My name is Matthew Miller,

1 co- counsel for the Franchise Tax Board.

2 MR. COUTINHO: Brad Coutinho, also for the
3 Franchise Tax Board. Thank you.

4 JUDGE LONG: All right. Thank you.

5 The issue in this matter is whether Appellants
6 have demonstrated reasonable cause to abate the
7 late-payment penalty.

8 Appellants have submitted exhibits 1 through 13,
9 and Franchise Tax Board has submitted Exhibits A through
10 G. The parties have stated they have no objections to the
11 exhibits, and the exhibits are hereby admitted as evidence
12 into the record.

13 (Appellant's Exhibits 1-13 were received
14 in evidence by the Administrative Law Judge.)

15 (Department's Exhibits A-G were received in
16 evidence by the Administrative Law Judge.)

17 Do we have any questions before we move on to the
18 parties' presentations? Franchise Tax Board?

19 MR. MILLER: No questions, Your Honor. Thank
20 you.

21 JUDGE LONG: Appellant, do you have any
22 questions?

23 MS. CLARE: No questions.

24 MR. BOEHM: No questions.

25 MR. RHIND: No questions.

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JUDGE LONG: Thank you.

As a reminder, we have Appellants' presentation for 15 minutes, and then the Panel and Franchise Tax Board may ask questions. And then FTB will conduct their presentation for 15 minutes. And then we have 5 minutes for Appellants' rebuttal. With that, we are ready to move to Appellants' presentation.

Mr. Boehm are you prepared to be sworn in?

MR. BOEHM: Yes.

JUDGE LONG: Please raise your right hand.

G. BOEHM,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

JUDGE LONG: Ms. Clare, are you prepared to be sworn in?

MS. CLARE: Yes, I am.

JUDGE LONG: Please raise your right hand.

S. CLARE,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

1 business care and prudence as we worked towards filing our
2 2020 tax extensions and required payments while trying to
3 secure further information on our partnership tax
4 information. These were K-1s from several states that
5 were being provided from my employer. That added to our
6 tax complexities during our 2020 filing.

7 We also believe these circumstances were
8 compounded by some personal difficulties we faced during
9 the Covid-19 pandemic. Of course, as we all know,
10 unprecedented time in world history, really. Covid as we
11 know also was declared a national emergency on March 13th,
12 2020, which is anticipated to terminate -- was anticipated
13 to terminate in May of 2023.

14 Under the IRS' reason for failing to file or pay
15 on time, penalty relief consideration -- and I know we're
16 talking here about California, but I do want you to note.
17 Covid-19 is listed as an example of other disturbances as
18 reasonable cause. Combined, these events created what we
19 believe were extenuating circumstances that compounded our
20 confusion and delay in realizing that we had inadvertently
21 not made the required 2020 tax payment, along with when we
22 filed our tax extension prior to the May 17, 2021,
23 deadline.

24 We believe -- and I'll go into it -- that we
25 provided here in our exhibits and what I'll complain here,

1 is necessary details and documentation that establish our
2 contention here of reasonable cause, including the
3 supported documentation.

4 I'll first start with our tax accountant John
5 Rhind who introduced himself. John has been a CPA in
6 business for over 50 years. I know he sounds like a young
7 man, but he's been doing this for a long. So, you know,
8 we trust John with our taxes throughout Sequoia and I's
9 joint filing period, which now is almost 19 years. John's
10 credentials, I believe, speak for themselves.

11 And John -- again, John has been in business for
12 over 50 years. We've relied on John's professional advice
13 for many years and without incidence and always
14 provided -- and he's always provided necessary and
15 accurate information and has sustained an impeccable tax
16 record, we have, with John's professional counsel.

17 John, I don't know if you wouldn't mind, maybe
18 you can talk a little bit more about that, and our
19 reliance on you, and some of the personal difficulties you
20 also faced during this period of time.

21 MR. RHIND: Yeah. Yeah. Yeah. Well, like Gregg
22 said, I have been the accountant for the family and for
23 the taxpayers for close to 40 years, I believe. I've, to
24 the best of my knowledge, this is the first time we've
25 ever had any type of a failure on my part. Just to

1 briefly, I did have some personal problems but that's --
2 that doesn't alleviate the tax law. And I realize the
3 taxpayers did rely on me to -- not only for this situation
4 but for all the situations we've dealt with over the years
5 to comply with the tax law.

6 Unfortunately, I thought I had taken care of the
7 problem of making sure that the payments were made on a
8 timely manner, but it's obvious that I did fail. In this
9 case, I forgot to follow up, and that's, you know, I can't
10 give any other excuse. I didn't follow up on it but -- so
11 it's on my shoulders. There's no question about it.

12 So I think that's -- even we've worked together
13 for many years, I did make a mistake in this case. And I
14 think that's about all I can say on that issue.

15 MR. BOEHM: Yeah. Thank you, John.

16 MR. RHIND: Yeah.

17 MR. BOEHM: Just to continue on -- just for, Your
18 Honors, to describe a little bit further of some of the
19 supporting documentation that we've provided. What we
20 tried to show here was -- and the FTB had requested some
21 of this information in their letter in response to us. We
22 tried to show the steps that we took to secure the
23 necessary information, not only for my employer, I
24 mentioned the partnership documentation that we were
25 awaiting, and just our ongoing communications with my

1 employer to secure this information, as well as, you know,
2 continued follow up and communication with both John and
3 my company.

4 So -- so our exhibits that we had provided
5 numbered 1 through 12 -- and I won't refer to any one of
6 them in particular right now at this time. But those
7 provide a number of different emails that show the intent
8 to pay -- show our intent to pay, our ongoing diligence,
9 correspondence, and prudence that we've used and we
10 continue -- we've used historically and continue to use
11 this year.

12 Really, it wasn't discovered by us until -- I
13 will now refer to a few of the attachments, attachments
14 number 12 where we discovered we hadn't paid it. And then
15 soon thereafter, we not only paid the penalty but the
16 interest as well. So I think we showed that there was no
17 intent for us not to pay at that time. And so I think the
18 record -- or our details that we showed here in this
19 correspondence hopefully, will show everybody that.

20 We also again, this wasn't admitted in our
21 record, but we cited a few cases. We did our diligence
22 here, Sequoia and myself and John, on some cases that we
23 thought were pertinent that showed some supported rulings
24 in which taxpayers relied on their professional advice to
25 establish reasonable cause in good faith. Again, I know

1 these weren't allowed to be submitted, but I'll just
2 reference a few. Sarvak versus Commissioner, DJB Holding
3 Corp. versus Commissioner, Neonatology Associates, P.A.
4 versus Commissioner, Bean versus Commissioner, and Test
5 versus Commissioner.

6 So those are --

7 JUDGE LONG: Mr. Boehm, can I stop you for one
8 moment.

9 MR. BOEHM: Sure. Sure.

10 JUDGE LONG: Can you please restate those cases
11 and include the citation, if possible.

12 MR. BOEHM: Yes. Yeah. They are --

13 JUDGE LONG: Thank you.

14 MR. BOEHM: They are a little bit long, so I'll
15 try to be -- I'll try to be pretty clear. So Sarvak
16 versus Commissioner, 125 capital A-F-T-R 2D 2020-974, 794
17 Fed APPX 670 CA 92020, citing capital DJB Holding Corp
18 versus Commissioner, 803 F.3D 1014, 1029-30, parenthesis
19 116 AFTR 2D 2015-6390, close parenthesis, 9th Circuit
20 2015.

21 The second one, Neonatology Associates P.A.
22 versus Commissioner, 115, capital T.C. 4399, parenthesis
23 2000; Bean versus Commissioner, capital T.C. memo
24 2000-355, supra. And finally, Test versus Commissioner
25 T.C. memo 2000-362 supra.

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Okay to continue?

JUDGE LONG: Yes. Thank you.

MR. BOEHM: Okay. You're welcome.

So as mentioned, you know, showing our continued correspondence and care to secure some of our documentation and follow up, despite this, our inadvertent failure to timely pay, I mentioned earlier, was not discovered until a review of the final filing of 2020 taxes documented on October 12, 2021, while reviewing our 2020 tax filing documents. We checked our tax payment records to confirm payments. And that's when we discovered for the first time that payments had not been made. And then I mentioned we did submit our penalty along with interest in our 2020 filing in October 14, 2021.

Furthermore, although we realize -- and again, we did some research here and looked it up, and we understand that, you know, historical evidence of timely filing of payments cannot by itself establish reasonable cause, we do believe it's very supportive in this instance for our documentation for reasonable cause showing our pattern of an overall credibility intent, sincerity, and further proof that this was not an act of willful intent to disobey the State statutes.

We also, you know, I talked about -- we talked

1 about Covid at the beginning of this. And I think we'd be
2 remiss if we didn't mention that, like the rest of the
3 world -- and we were going through a lot of different
4 effects of Covid, you know, raising a family, distance
5 learning, our mother -- or Sequoia's mother.

6 Sequoia was coordinating home health care for
7 her. We were out of state for a portion of it, traveling
8 to Oregon and back a number of times during that year for
9 care. Sequoia took on a much greater role of tax
10 correspondence. So though Covid-19 certainly had certain
11 affects that my business actually became busier during
12 Covid-19. I'm in the real estate industry, industrial
13 warehouses. So it required a dramatic increase in the
14 number of hours for me to work and doing my business. And
15 Sequoia had to take on a much greater role in our
16 tax-related correspondence.

17 Additionally, Sequoia also took on, as I
18 mentioned, the responsibility to care for her elderly
19 parents, including her mother who is going through -- who
20 is suffering from [REDACTED] and
21 so our continued travel problem back and forth. Sequoia
22 also worked tirelessly to schedule a number of vaccine
23 appointments as a volunteer for several seniors.

24 She volunteered on this on her own because we had
25 friends and family members, over 20 seniors, to secure

1 appointments at this time for Covid-19 vaccines. Which
2 probably many on this call will remember, were very, very
3 difficult to get. So she spent a lot of time on that.

4 I'm close to wrapping up. So in summary, we feel
5 strongly that we've provided, you know, a timeline of our
6 events, description, and exhibits that show evidence of
7 our reasonable cause for failure to pay this extension
8 payment by the required deadline, despite the fact we
9 exercised ordinary business care and prudence while
10 maintaining communication and providing accurate
11 information to our CPA. We believe the abatement of the
12 penalty is fair and justified, and we really appreciate
13 Your Honors' consideration for this.

14 And we're happy to answer any questions you might
15 have on what we just presented. Thank you very much for
16 your time.

17 JUDGE LONG: All right. Thank you.

18 Now, I'll give a moment for questions.

19 Judge Johnson, do you have any questions?

20 JUDGE JOHNSON: No questions. Thank you.

21 JUDGE LONG: Judge Akin, do you have any
22 questions?

23 JUDGE AKIN: Judge Akin speaking. No questions
24 and thank you for your presentation and testimony.

25 MR. BOEHM: You're welcome.

1 JUDGE LONG: This is Judge Long. I do have one
2 question. I went through, and I've reviewed all of your
3 exhibits that you submitted. And I did note that one of
4 your exhibits includes an email to Mr. Rhind asking for
5 the tax amounts so you can timely pay, and this was on
6 April 6th of 2021. And Mr. Rhind stated he would email
7 the amounts and that they were due on May 17th. I wanted
8 to check if that was the final discussion of the 2020
9 payments prior to the payment due date. I just want to
10 confirm my understanding.

11 I'll ask Appellants.

12 MR. BOEHM: Go ahead, Sequoia.

13 MS. CLARE: Hi. This is Sequoia. I believe
14 there was [UNDISCERNIBLE] follow up presented
15 [UNDISCERNIBLE].

16 Is that your understanding, Gregg.

17 MR. BOEHM: You weren't clear at the beginning
18 when you started talking. We couldn't hear you. Now I
19 think you're muted. Sorry.

20 We're not together right now. I'm on the East
21 Coast and she's --

22 MS. CLARE: Okay. My apologies. My camera
23 [UNDISCERNIBLE]. Go ahead and speak. I believe my camera
24 is delayed. So --

25 MR. BOEHM: No. No, you're good. You're good.

1 MS. CLARE: Okay. I'll take a moment to review
2 the exhibits that we presented, but I believe there was
3 some additional follow up to make sure that we had -- we
4 were going to receive the information you needed.

5 JUDGE LONG: Okay. And then I'd also like to
6 confirm my understanding with Appellants that you
7 discovered that the 2020 tax payment had not been made
8 when you went to file your 2021 payment? That's when you
9 first realized the 2020 payment had not been made?

10 MR. RHIND: Your Honor, this is John Rhind. Can
11 I try to clarify that?

12 JUDGE LONG: Yes, please.

13 MR. RHIND: I -- I -- when we got ready to make
14 the payments on May the 5th -- or May the 17th -- May 17th
15 when the extension was filed, I thought I provided all the
16 information necessary to -- for both Gregg and Sequoia to
17 make the payments. And like I said before, I didn't
18 follow up on that because it was a substantial amount of
19 money that had to be paid, and, of course, we've been in
20 correspondence for some time about that.

21 The problem came -- or when it was discovered --
22 or at least when I discovered the fact that it had not
23 been paid is when I got ready to finalize the tax returns
24 before filing on the due date of October 15th. I had gone
25 ahead and prepared the returns with the assumption that it

1 had been paid. And when I provided a draft copy to Gregg
2 and Sequoia, that's when we realized that it had not been
3 paid.

4 And Gregg, I think if I remember correctly, Gregg
5 had either given me a call or given me an email saying
6 that to the best of their records that in that particular
7 point in time that it had not been paid. And so I think
8 it really wasn't discovered until right around the due
9 date of the filing of the tax return on extension.

10 JUDGE LONG: All right. Thank you.

11 Appellants, so do you have anything else you
12 would like to add before I move to Franchise Tax Board's
13 presentation?

14 MS. CLARE: Oh, yes. This is Sequoia. To answer
15 your first question about the last inquiry --

16 MR. RHIND: I don't have any. This is John
17 Rhind. I don't have any.

18 MS. CLARE: -- there was another one on
19 [UNDISCERNIBLE] and I we --

20 MR. BOEHM: You're breaking up a little bit,
21 Sequoia.

22 But I found the same thing, Judge Long. We had a
23 correspondence on -- you had asked if -- I think you said
24 April 6th, if that was our last correspondence. We
25 actually have -- and it's included in attach -- sorry --

1 exhibit -- I believe it's in Exhibit 3 -- sorry --
2 Exhibit 4, rather. And it was on April 12th. It's an
3 email from Sequoia to John with me copied that asked about
4 the tax payment amount -- the tax payment amount that was
5 due.

6 I'm sorry. That -- Sequoia, is that what you
7 were going to mention? Actually, that mention -- that
8 actually talked about the 2021 tax estimate, which I think
9 was another one of your questions on when we started to
10 discover it, or when we were asking about whether the
11 extension payment was made.

12 We were also getting ready to make our extension
13 payments -- estimate payments, rather, for 2021. I know
14 it's a little confusing. So we were -- at the same time
15 we were assuming on the -- we were clear on the extension
16 on that payment. We were also going and talking about our
17 estimates for 2021 as well.

18 JUDGE AKIN: And I just wanted to chime in. I
19 apologize. This is Judge Akin speaking. We are having a
20 little difficulty with the audio for Ms. Boehm. So there
21 are a couple of options. One, you can turn off your
22 camera which might help the bandwidth so that we can hear
23 you a little better. Or two, we also have a call-in
24 feature.

25 And I'm sorry for the interruption. I just

1 wanted to provide some quick suggestions.

2 MS. CLARE: Thank you. I appreciate that. This
3 is Sequoia. Can you hear me better now?

4 JUDGE AKIN: You're sounding much, much clearer.

5 MS. CLARE: Okay. Okay. Let me know. I can
6 call in as well. But we wanted to just circle back to
7 Judge Long's inquiry about the last time that we had
8 reached out to John regarding requesting the extension
9 payment information. So there are multiple emails that
10 continued on past -- I believe she said April 6th. And I
11 apologize. I don't know exactly how the exhibits are
12 numbered. I believe it may be Exhibit 5, if Exhibit 1 was
13 the brief that was submitted earlier. Is that correct?

14 MR. BOEHM: No. The brief -- the brief wasn't
15 accepted.

16 MS. CLARE: Understood, but the original brief,
17 our original letter that was submitted as brief, I believe
18 that started as Exhibit 1. Is that correct?

19 MR. BOEHM: No. That's 13.

20 MS. CLARE: Okay. So they were renumbered. So
21 this would be Exhibit 4. Again, on Exhibit 5 on May 10th,
22 there was an additional email between myself and John
23 Rhind. And then his response would be Exhibit 6 that --
24 confirming that he had received -- he had everything
25 wrapped up.

1 JUDGE LONG: All right. Thank you, Appellants.
2 That's all of my questions.

3 Franchise Tax Board, did you have any questions
4 for the witness?

5 MR. MILLER: No questions, Your Honor. Thank
6 you.

7 JUDGE LONG: All right. And just to confer with
8 my Panel, Judge Akin, do you have any questions?

9 JUDGE AKIN: No questions at this time. Thank
10 you.

11 JUDGE LONG: Judge Johnson?

12 JUDGE JOHNSON: No questions. Thank you.

13 JUDGE LONG: All right. Thank you.

14 FTB, you may begin with your presentation.

15 MR. MILLER: Thank you, Your Honor.

16

17 PRESENTATION

18 MR. MILLER: Good afternoon, Panel members. This
19 is Mathew Miller representing the Franchise Tax Board.
20 With me is my Co-Counsel Brad Coutinho.

21 Appellants timely filed their Form 540 on
22 October 14th, 2021, one reported a balance due of
23 \$994,392. Because Appellants failed to pay their tax
24 liability within the Covid-19 extended due date of
25 May 17th, 2021, the FTB properly assessed the late-payment

1 penalty. On March 10, 2022, two Appellants submitted a
2 claim for refund based on reasonable cause.

3 To establish reasonable cause, Appellants must
4 show that their failure to make timely payments of the
5 proper amount of tax occurred despite the exercise of
6 ordinary business care and prudence. In this case, all
7 evidence indicates that Appellants failed to make efforts
8 that an ordinary prudent businessperson would make to
9 assess their proper tax liability and pay it by May 17th,
10 2021.

11 In their claim for refund, dated March 10th,
12 2022, that is Respondent's Exhibit G, Appellants contend
13 that they failed to make timely payments because there was
14 confusion relating to payments of their estimated taxes
15 made during taxable years 2020 and 2021. Appellant
16 stated, quote, "We paid the first three quarterly 2021
17 payments timely believing we had paid the amount due for
18 2020. This unintentional error was recognized in
19 October 2021," end quote.

20 Their intention to pay estimated tax payments for
21 2021 is substantiated by Appellants' Exhibit 1, FTB Tax
22 History. There's a \$25,000 payment made for 2020 on
23 January 14th, 2021, and two additional payments towards
24 2021 on April 15th and June 15th. Even if Appellants had
25 applied the \$142,890 in estimated tax payments made in

1 2020 entirely to -- made in 2021, entirely to 2020, those
2 payments would have only amounted to approximately
3 14 percent of their obligations. They would still have
4 had a remaining balance of \$851,492.

5 Other than an intentional oversight, Appellants
6 provided unintentional oversight -- pardon me. Appellants
7 provided no explanation for their failure to remit the
8 balance due by May 17th, 2021, in their original claim for
9 refund letter. In your precedential opinion of Appeal of
10 Friedman, the OTA held that a failure to timely remit the
11 balance due on a tax liability caused by an oversight does
12 not by itself constitute reasonable cause. Thus, FTB
13 properly denied their claim for refund.

14 Today Appellants raise three new arguments in
15 support of their claim for refund. And for the first
16 time, last -- two weeks ago, May 3rd, 2023, Appellants
17 submitted their first documentary evidence in support of
18 their claim for refund. Appellants now contend also that
19 their inability to obtain required tax documents from
20 third parties and their personal difficulties caused by
21 the Covid-19 pandemic, demonstrate reasonable cause.
22 Additionally, they assert a reliance on a tax
23 professional.

24 As to the first point, an asserted lack of
25 documentation or difficulty in calculating a tax ability

1 does not by itself constitute reasonable cause for late
2 payment of tax. A strong and often determinative factor
3 in this area of law is whether or not the taxpayer has
4 access to sufficient information upon which to base
5 reasonable estimate of their tax liability, as well as the
6 extent of the taxpayer's efforts to assess his or her
7 proper tax liability.

8 In their May 3rd submission, Appellants include a
9 series of emails between themselves and a third party,
10 Black Creek Group, and between themselves and their tax
11 preparer. In general, these emails appear to focus on the
12 timing of the receipt of the schedules K-1, the timing of
13 the estimated tax payments and the timing of filing.

14 However, one email in particular is noteworthy.
15 It's Exhibit 2. On March 11, 2021, over two months before
16 payment of their 2020 tax liability was due, Mr. Boehm
17 received the following email from Black Creek Group
18 regarding Appellants' 2020 tax return.

19 Quote, "Gregg, tax season is approaching, and I'm
20 reaching out to provide you with information related to
21 your taxes for IPT and BTC-1. Please see the attached
22 which details tax characterization of your proceeds,
23 timing of your K-1s, and the next steps related to your
24 taxes from the 2020 IPT and BTC-1 distribution events. As
25 noted in this letter, please feel free to reach out to

1 myself or to Daniel with any questions." And this is
2 signed, Hanna Hoopingarner, Senior Vice President of
3 Strategic Planning at Black Creek.

4 So based on this email, it appears that Black
5 Creek Group provided a detailed explanation of the tax
6 characterization of the distribution event that led to
7 Appellants' tax liability. Typically, Mr. Boehm's
8 income -- wage income was approximately [REDACTED]
9 However, there was a capital gain due to a sale of a
10 business property. The proceeds of which their share --
11 the Boehms' share approximated approximately \$7 million.
12 So this is a one-time sale in 2020 apparently related to
13 Mr. Boehm's real estate business.

14 And this email seems to characterize and explain
15 to the Boehms the tax implications of this. However,
16 Appellants provide no evidence that they followed up with
17 Black Creek Group to determine their tax liability, and
18 reliance on their schedules K-1 is not enough to establish
19 reasonable cause. So a reasonably prudent person would
20 have actually followed up and tried to get more
21 information to determine a tax liability. But despite the
22 invitation to do so, there's no evidence in the record
23 that the Boehms did so.

24 Moreover, on Appellants' May 3rd submission, they
25 also received their copies of K-1 from Black Creek Group

1 on July 9th, 2021. That's Exhibit 7. Thus, on July 9th,
2 2021, Appellants had access to sufficient information upon
3 which to base a reasonable estimate of their tax
4 liability. However, according to Appellants' Exhibit 10,
5 they appear to not have provided their tax preparer their
6 2020 tax file until October 4th, 2021.

7 So there's two periods here between March 11th,
8 2021 and July 9th, 2021. They first had access to
9 information from Black Creek Group relating to the
10 distribution event. And there appears to be no inquiries
11 with Black Creek Group or with their tax preparer to
12 determine their proper tax liability. Again, between
13 July 9th, 2021, and October 14th, 2021, there's a
14 five-month period which they actually have sufficient
15 information to make estimates of their tax liabilities,
16 and there's no evidence in the record that they appear to
17 do so.

18 As the OTA has noted before, the question of
19 whether reasonable cause for late payment does not end
20 once reasonable cause is found to exist at the time of the
21 due date for the payment. The inquiry continues until
22 actual payment is remitted for an acceptable -- an
23 acceptable reason for failure to pay taxes will excuse
24 such failure only so long as the reason remains valid.

25 Here, there's no period of time where Appellants

1 have actually established reasonable cause. And between
2 that two-month period between March or three-month period
3 in March to July, as well as that five-month period
4 between the time they actually receive sufficient
5 information and the time they remitted payment. I'm
6 referring to the Appeal of Triple Crown Baseball, LLC,
7 Your Honors.

8 So based on Appellants May 3rd submission, they
9 received copies of their schedules K-1 from Black Creel
10 Group on July 9th. They had access to sufficient
11 information to reasonably estimate their tax. They failed
12 to do so. They didn't pay their tax liability until
13 October 14th, over five months later -- or three months
14 later. I'm sorry. I think I'm miscalculating the amount
15 of months here, Your Honors. Forgive me. I have a
16 difficult time doing month math in my head, apparently.

17 Regarding their third argument, Appellants
18 contend that their personal difficulties caused by the
19 Covid-19 pandemic demonstrate reasonable cause. However,
20 they provide no explanation as to why between May 17th and
21 October 14th, the pandemic or illness of either Mr. or
22 Mrs. Boehm prevented them from timely paying their tax
23 liability.

24 And as to the fourth argument they've made today,
25 as I'm sure that Mr. Rhind is a very expert and

1 professional tax preparer, I have no doubt. And we
2 obviously sympathize with any professional or personal
3 issues he had during that period. However, it's actually
4 irrelevant to this appeal because reliance on a tax
5 professional is not a basis for reasonable cause.

6 The filing or determining and paying your proper
7 tax liability is a nondelegable duty. That's established
8 in the U.S. Supreme Court Case of Boyle and adopted by the
9 State Board of Equalization in the Appeal of Berolzheimer.
10 If I can quote, "The none delegable duty principle
11 applicable to the late-filing penalty in Boyle also
12 applies in the late-payment penalty context the primary
13 duty to timely pay the taxes with the taxpayer and the
14 duty cannot be delegated or excused by the failure of a
15 tax professional, including an accountant or an attorney.
16 It requires no special training or effort to ascertain a
17 deadline and make sure that it is met."

18 In conclusion to establish reasonable cause, the
19 Appellants must show that their failure to make a timely
20 payment of the proper amount of tax occurred despite the
21 exercise of ordinary business care and prudence, based on
22 four arguments, none of which establish reasonable cause.
23 Therefore, FTB respectfully request that the OTA sustain
24 its action in denying Appellants' claim for refund.

25 And at this time, I'm happy to address any

1 questions that the Panel may have for the FTB.

2 JUDGE LONG: All right. Thank you, FTB.

3 Judge Akin, do you have any questions for
4 Franchise Tax Board?

5 JUDGE AKIN: I would just like to ask for
6 clarification on that second citation. I know you
7 referenced Boyle, and then another case that extended it
8 to the late-payment penalty. Could you provide that case
9 name and maybe spell it for us.

10 MR. MILLER: Yeah. Appeal of Berolzheimer,
11 B-e-r-o-l-z-h-e-i-m-e-r. The SBE cite is 86-SBE-172.
12 Also, I have the West Law cite. It's 1986 WL 22860.

13 JUDGE AKIN: Okay. Thank you. And that was my
14 only question just to clarify that.

15 MR. MILLER: Thank you, Your Honor.

16 JUDGE LONG: All right. Thank you.

17 Judge Johnson, do you have any questions for
18 Franchise Tax Board?

19 JUDGE JOHNSON: This is Judge Johnson. No
20 questions. Thank you.

21 JUDGE LONG: All right. Appellants, you have
22 five minutes for rebuttal. You may begin whenever you are
23 ready.

24 MR. BOEHM: Sequoia, are you -- sorry. This is
25 Gregg Boehm. Sequoia, are you trying to talk?

1 MS. CLARE: No, I wasn't. I was muted. Do you
2 want to go ahead?

3 MR. BOEHM: Sure.
4

5 CLOSING STATEMENT

6 MR. BOEHM: Thank you, Mr. Miller. I appreciate
7 the explanation.

8 I think it's important to note that you had
9 talked about -- you had talked about a few things, of
10 course, but going over some of our exhibits and the
11 communication back and forth between Black Creek and I.
12 But I think it's important to note that we had determined
13 the amount we owed. We were acting under the impression
14 that we had already made the payment at the time when we
15 had made our estimated payments. So it was a little bit
16 different than I think you were describing it, or at least
17 what you were reading in the evidence.

18 So we had already -- we had inadvertently thought
19 we already made that payment. So it wasn't -- it wasn't a
20 question of whether we were trying to determine the amount
21 owed and what we were going to pay. So though I did --
22 though, there's no correspondence that we provided you
23 after I had gotten the information from Black Creek, of
24 course that information was forwarded onto our accountant,
25 which was well in advance of the April date. So I just

1 wanted to add that.

2 Sequoia, do you have anything else to add?

3 Or John?

4 MR. RHIND: Yeah, I think that is correct.

5 Because in the process of trying to determine what the
6 actual tax liability would be on May the 17th, we did have
7 sufficient information to make that calculation, and I had
8 made the calculation. It's just that it didn't -- it
9 didn't get paid on May the 17th.

10 MS. CLARE: And this is Sequoia. Just to add to
11 that, as we were making the other payments for the 2021
12 estimates, we were under the impression that those
13 payments for 2020 tax extension that had been determined
14 and all the information had been provided to our
15 accountant, that those payments were made at the -- at the
16 same time. And so that is why you'll see the
17 correspondence between ourselves and John back and forth
18 confirming that we had met all of our tax liabilities,
19 both with the 2021 estimates, but as well as the extension
20 and extension payments.

21 And you could see that because we were acting
22 under the impression that payment had been made, it wasn't
23 until we were making our final filing in October that it
24 had gone unrecognized that it wasn't paid. It wasn't that
25 we hadn't determined the amounts.

1 And I guess just additionally, the other
2 information, the reason that we're also citing the
3 extenuating circumstances with Covid during that time,
4 there was, you know, so much going on both personally and,
5 you know, with our -- with our children and my parents
6 that we -- that's why we were working so hard and
7 diligently to communicate back and forth. And we do feel
8 that we had established, you know, and were exercising
9 reasonable business care and prudence with all the
10 correspondence that we had been making.

11 JUDGE LONG: All right. Appellants, does that
12 conclude your rebuttal?

13 MS. CLARE: Gregg, would you like to add anything
14 else?

15 MR. BOEHM: No. Thank you, Your Honors.

16 JUDGE LONG: All right. Franchise Tax Board, did
17 you want the opportunity to ask Appellants any questions
18 about their testimony?

19 MR. MILLER: No, Your Honor. Thank you.

20 JUDGE LONG: All right. I'll go back to my
21 co-Panelists. Judge Akin, did you have any further
22 questions for either party?

23 JUDGE AKIN: Judge Akin speaking. No questions.
24 Thank you.

25 JUDGE LONG: All right. Judge Johnson, did you

1 have questions for either party?

2 JUDGE JOHNSON: This is Judge Johnson. No
3 questions. Thank you.

4 JUDGE LONG: All right. The evidence has been
5 admitted into the record, and we have your arguments and
6 your briefs as well as the oral arguments that were
7 presented today. We have now a complete record with
8 regard to the issue on appeal from which to base our
9 decision, and the parties should expect our written
10 opinion no later than 100 days from today.

11 Do we have any final questions before we conclude
12 today from Appellants?

13 MR. BOEHM: No, Your Honor.

14 MR. RHIND: This is John Rhind. No -- pardon me,
15 Gregg.

16 MR. BOEHM: No. Go ahead, John.

17 MR. RHIND: No, Your Honor. I have no further
18 questions.

19 JUDGE LONG: All right. Thank you.

20 Franchise Tax Board, do you have any further
21 questions?

22 MR. MILLER: No questions, Your Honor. Thank you
23 very much.

24 JUDGE LONG: All right. I wish to thank both
25 parties for their efforts thus far on appeal. With that,

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we are now off the record.

The next hearing will take place at 3:05. Thank
you, everyone.

(Proceedings adjourned at 2:48 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 3rd day of June, 2023.

ERNALYN M. ALONZO
HEARING REPORTER